

In the Matter of Merchant Mariner's Document No. Z-17096-D1
ans All Other Seaman Documents
Issued to: Thomas C. Cooper

Decision of the Commandant
United States Coast Guard

1219

Thomas C. Cooper

This appeal has been taken in accordance with Title 46 United States Code 239 (g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 21 December 1959, an Examiner of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's seaman document upon finding him guilty of misconduct. The seven specifications found proved allege that while serving on board the United States steamships PIONEER STAR and TYSON LYKES in 1957 and 1959, respectively, Appellant assaulted and battered a ship's officer; Appellant also assaulted this officer with a knife; he threatened another officer; Appellant failed to join his ship three times; and he failed to perform his duties on four consecutive days.

At the hearing on 15 July, 5 August and 18 November 1959, Appellant was represented by counsel. Appellant went to sea in August and was discharged at Philadelphia in October 1959. On 18 November, counsel indicated to the Examiner, his desire to withdraw from the case since he had not been contacted by Appellant and could not reach him by mail. Counsel attempted again by letter of 24 November to get in touch with Appellant in Philadelphia. Counsel told Appellant to come to New Orleans for the hearing or to release counsel from the case. Appellant, on appeal, admitted receiving this letter and not answering it. On 15 December, counsel withdrew with the permission of the Examiner. On this date, pleas of not guilty were entered to the charge and each specification on behalf of Appellant after counsel withdrew, and the Investigating Officer submitted evidence including the depositions of the two officers referred to in the specifications.

The Examiner rendered the decision in which he concluded that the charge and seven specifications had been proved. He entered an order suspending all documents, issued to Appellant, for a period of twelve months. Appellant was not heard from until April 1960 and the decision was served on him on 2 May 1960.

From 6 August to 24 October 1957, Appellant was serving as an oiler on board the United States SS PIONEER STAR and acting under authority of his document.

On 11 August, Appellant failed to join the ship upon her departure from Newport News, Virginia. He rejoined the ship at Savannah, Georgia on 13 August.

On 9 September, Appellant threatened to beat up the Chief Engineer when he entered a room on the ship, broke up a drinking party and confiscated a bottle of whisky which Appellant claimed was his.

From 21 to 24 September, inclusive, Appellant failed to turn to and perform his assigned duties between 0001 and 0800.

On 23 October at Fremantle, Australia, the Second Assistant Engineer answered a knock at his door and saw Appellant standing there with a bread knife in his right hand. With his left hand, Appellant grabbed the Second Assistant and stepped forward while holding the knife poised for an upward thrust. The Second Assistant overpowered Appellant with judo and forced him to drop the knife. Appellant was arrested and sentenced to three month's imprisonment before the Fremantle Police Court.

From 9 May to 6 July 1959, Appellant was serving as an ordinary seaman on board the United States SS TYSON LYKES and acting under authority of his document.

On 4 June, Appellant failed to join the ship upon her departure from Liverpool, England. He rejoined the ship on the next day at Manchester.

On 6 July, Appellant failed to join the ship upon her departure from Pensacola, Florida. He did not rejoin prior to completion of the voyage at New Orleans o 8 July.

Appellant's prior record with the Coast Guard consists of three admonition. One of these was in 1957 for assault.

This appeal has been taken from the order imposed by the Examiner. Appellant states that he did not have any money to get to New Orleans after he was discharged unexpectedly at Philadelphia instead of New Orleans in October 1959 and was robbed of \$800. His request to have his document sent to Philadelphia was refused. When Appellant received the letter from his attorney in New Orleans in November, he did not answer it because he did not know what to write. Appellant believed the hearing would be continued until he could appear to present evidence in his defense. For this reason, it is requested that a new hearing be granted to permit the production of witnesses and other evidence by Appellant.

Alternatively, mitigation of the order is requested because of Appellant's commendatory World War ii record and the fact that he was jailed in Australia for the assault on the Second Assistant.

As a second alternative, it is requested that Appellant be placed on probation because of the great hardship to his family if he is not permitted to serve as a seaman.

APPEARANCE on Appeal: Krusen, Evans and Shaw of Philadelphia,
Springer H. Moore, Jr., Esquire, of

by
Counsel.

OPINION

Appellant's request for a new hearing is denied. He was present when the hearing commenced on 10 July 1959 and yet he did not later get in touch with his counsel or the Coast Guard in order to determine the status of the hearing until April 1960 even though he received an urgent letter from his counsel in November 1959 calling Appellant's attention to the fact that the case was still pending. In Elgin, Joliet and Eastern Railway Co. v. Burley et al. (1946), 327 U.S. 661 at 666, it was stated that "due notice" of hearings required at least knowledge of the pendency of the proceedings or knowledge of such facts as would be sufficient to put the party on notice of their pendency. Appellant herein knew that the hearing was still pending. Therefore, the burden was on him to contact his counsel or the Examiner in New Orleans. Appellant had two months in which to do this between the time of his return to Philadelphia and when the Examiner rendered his decision. Nevertheless, he did nothing about it until April 1960. As a result, Appellant waived the right to submit his defense.

The alternative requests for probation or some other mitigation of the order are not persuasive in view of the numerous offenses involved and the very serious nature of the assault on the Second Assistant Engineer. Except for the latter's adeptness at judo, it is not unlikely that Appellant would have been convicted for manslaughter before the Australian court. Appellant has a record of one such conviction in 1944 for killing a man by stabbing.

It is mt opinion that the order of twelve month's suspension is lenient under the circumstances.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 21 December 1959, is
AFFIRMED.

A. C. Richmond
Admiral, United States Coast Guard
Commandant

Signed at Washington, D.C., this 7th day of March 1961.